



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

HART *v.* COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 582.]

1. Criminal Law (§ 564 (4)*)—Commonwealth Held to Have Proved Venue.—In a prosecution for rape, where it was testified that the scene of the crime was on a road between the home of the prosecutrix, less than a half mile west of the city and the limits of the city of Staunton, held, that venue was proved.

2. Criminal Law (§ 304 (6)*)—Judicial Notice Taken of Location of City within County.—The court will take judicial notice that the city of Staunton is located within the county of Augusta, and is so located therein that the county surrounds and extends to a distance of over 15 miles to the west of the corporate limits.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 633.]

3. Criminal Law (§ 304 (5)*)—Judicial Notice Taken of Distances on Map.—Courts will take judicial notice of distances as calculated by a map.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 635.]

4. Criminal Law (§ 1213*)—Death for Attempted Rape Not Cruel or Unusual Punishment.—Punishment of death for the crime of attempt to commit rape was not contrary to the Fourteenth Amendment to the federal Constitution or Const. Va. 1776, § 9, which forbids cruel and unusual punishments, such punishment being within the limits prescribed by Code 1919, § 4767.

5. Criminal Law (§ 1213*)—Statute Permitting Jury to Punish Attempt to Rape by Death Not Invalid.—Code 1919, *v.* 4767, is not unconstitutional because it authorizes cruel and unusual punishment, in that it empowers juries, in their discretion, to impose the punishment of death for an attempt to commit rape, under Const. Va. 1776, § 9.

6. Criminal Law (§ 1213*)—What Constitutes "Cruel and Unusual Punishment."—Under Const. § 9, prohibiting cruel and unusual punishments, only such punishments were prohibited as were regarded as cruel and unusual when such provision of the Constitution was adopted in 1776, namely, such bodily punishments as involve torture or lingering death, such as are inhumane and barbarous, as, for example, punishment by the rack, by drawing and quartering, leaving the body hung in chains, or on the gibbet, exposed to public view, and the like.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Cruel and Unusual Punishment.]

7. Criminal Law (§ 1213*)—Electrocution Not "Cruel or Unusual Mode of Punishment."—The punishment of death by electrocution is not a "cruel or unusual mode of punishment," under the Eighth Amendment to the federal Constitution, and Const. Va. 1776, § 9.

8. Criminal Law (§ 304 (2)*)—Common Knowledge that Attempted Rape Is as Heinous as Consummated Offense.—It is a matter of com-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

mon knowledge that the crime of attempted rape is well-nigh, if not altogether, as heinous as the consummated offense of rape, and that public indignation is as much aroused by the one offense as the other, where the full accomplishment of the criminal purpose is thwarted only by some extraneous circumstance, and that, unless there is a prompt conviction and a severe penalty imposed, a lynching is liable to result.

9. Criminal Law (§ 577*)—Accused Held Given Reasonable Opportunity to Employ Counsel.—In prosecution for rape, where no motion was made for a continuance of the case, and there was a hung jury on a first trial, held that accused was given reasonable opportunity to employ counsel and prepare for trial, the same counsel representing accused on both trials.

10. Rape (§ 53 (1*))—Verdict for Attempted Rape Held Not Contrary to Evidence.—In prosecution for rape, a verdict of guilt of attempted rape held not contrary to the evidence.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 629.]

Error to Circuit Court, Augusta County.

Henry Hart was convicted of an attempt to rape, and brings error. Affirmed.

Carter Braxton and Curry & Curry, all of Staunton, for plain-in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

SNARR v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 590.]

1. Criminal Law (§ 365 (2*))—Testimony as to Defendant's Arrest for Driving Automobile While Intoxicated, in Prosecution for Transporting Liquor, Held Admissible.—In prosecution for unlawful transportation of liquor following discovery of liquor in defendant's possession after being arrested for driving automobile while intoxicated, testimony as to his arrest on such other charge held admissible as against contention that it related to another offense, being part of the *res gestæ*.

2. Criminal Law (§ 899*)—Defendant Waived Objection to Testimony as to Certain Facts by Testifying and by Cross-Examining Witnesses as to Such Facts.—In prosecution for unlawful transportation of intoxicating liquors, defendant, having cross-examined witnesses for state as to his arrest on the charge of driving automobile while intoxicated and circumstances preceding arrest, and having him-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.